




The Complete Guide to Understanding BIA Appeal and How It Can Help You



Introduction

The BIA, or Board of Immigration Appeals, is the highest entity within the U.S. administrative immigration system. This board has the authority to review decisions made by immigration judges or the U.S. Citizenship and Immigration Services (USCIS). Through BIA appeals, you can present strong arguments supporting your case, additional evidence, and demonstrate that the original decision was erroneous or unfair.

In this guide, we will explain everything you need to know: from what a BIA appeal is, who can file one, the steps of the process, how to find reliable legal help—such as a specialized BIA attorney—and what to consider based on the different locations of the immigration appeals boards.

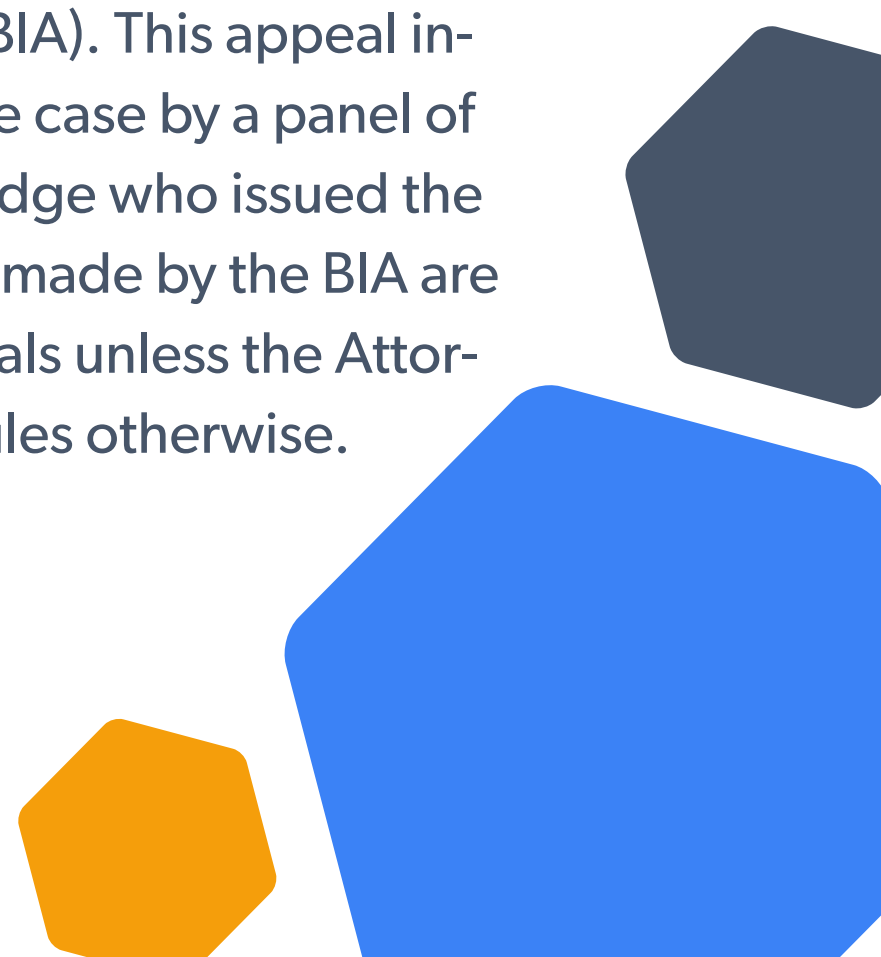




What is the BIA?

The BIA (Board of Immigration Appeals) is the highest administrative body capable of interpreting and applying immigration laws. Commonly, while the BIA functions as a sort of appellate court, this body does not conduct oral hearings but instead performs a “paper review” of cases that have been denied, based on the arguments and evidence already presented before a judge. However, on rare occasions, the BIA hears oral arguments for appealed cases at its main headquarters in Falls Church, Virginia.

In simple terms, if an immigration judge denies your application for asylum, cancellation of removal, adjustment of status, or another immigration benefit, you have the right to appeal the decision to the Board of Immigration Appeals (BIA). This appeal involves requesting a review of the case by a panel of BIA judges, different from the judge who issued the original decision. The decisions made by the BIA are binding on all immigration officials unless the Attorney General or a federal court rules otherwise.



What types of cases can the BIA review?

The Board of Immigration Appeals can affirm, modify, reverse, or remand a case to an immigration judge when there are decisions regarding:

- Deportation (removal orders)
- Denials of asylum
- Cancellation of removal
- Adjustment of status applications
- Denied family petitions
- Immigration bonds
- Waivers and special permissions

It is important to clarify that in these processes, the BIA acts as a reviewing court and does not make final decisions on cases. While a judge hears your case in person, the BIA makes its decisions in writing by reviewing the case records and arguments previously presented by both parties.

How Do I Know If I Should Appeal My Case?

You are the only person who can decide whether to appeal a judge's decision against you. While it is possible to win an appeal, achieving this is generally easier if the law is on your side. To file an appeal, you should consider whether something unfair occurred during the process that may have hindered your ability to present your case. Some examples that could be grounds for an appeal include:

- Claiming that you were unable to communicate with the interpreter or did not understand much of the hearing.
- A witness of yours was not allowed to testify.
- The judge did not allow you to testify about the most important parts of your story.
- Written evidence you submitted, which you consider crucial to the process, was not taken into account.
- You received inadequate legal counsel during the hearing.
- You have a mental or medical condition that af-

fects your ability to understand what happened during the hearing.

In any case, it is always important to consult with a specialized attorney to determine whether you have a valid reason to appeal.

What Is the BIA Appeal Process?

A simplified legal definition is that the BIA appeal process is a legal procedure that allows for the review of a judge's decision. However, it is not a new trial. During the appeal process, the Board of Immigration Appeals examines whether the judge made a legal error or failed to correctly apply immigration law by reviewing the documents, transcripts, and legal arguments from the original case.

As mentioned earlier, the BIA does not conduct oral hearings, except in very specific cases.

At the end of the hearing in immigration court, after the judge has issued a negative decision in your

case, they will ask: “Do you want to appeal my decision?” If you believe you will file an appeal, it is very important to answer YES to this question.

By doing so, you activate your option to reserve the right to appeal. After responding YES, you will automatically be granted 30 days to file your notice of appeal and formally begin the process. It is likely that the judge, upon hearing your intention to appeal, will inform you of the exact date by which you must submit your appeal brief. If not, ask the judge for the deadline to file your notice of appeal with the board to ensure you have the correct date, as this is crucial to your process.

If you inform the judge of your intention to appeal, the court official will provide you with the Notice of Appeal (Form EOIR-26). From the moment you receive this, you will have 30 days to submit this documentation to the board. This means that the Virginia board must receive your notice of appeal before the 30th day. It is recommended that you mail the documentation at least 10 days before the deadline to ensure it arrives on time.

If the board receives your notice of appeal after the deadline, your appeal will not be considered, and the immigration judge's decision will become final and binding.

What Happens After Submitting My Notice of Appeal?

The first step in appealing an immigration judge's decision is to complete and submit Form EOIR-26, which notifies the BIA of your intent to appeal. In this documentation, you must briefly explain the grounds for your appeal and indicate that you will submit a written brief later, as recommended by the Florence Project.

Approximately three weeks after your notice of appeal is received, the Board will mail you an orange acknowledgment of receipt, called the Filing Receipt, which confirms that your appeal has been successfully received. If you do not receive this document within a month of sending your notice of appeal, it is important to contact the Board or seek assistance from your attorney as soon as possible.

A few months later, once the BIA accepts the appeal, the complete case record (Record of Proceedings) is also transferred. This documentation includes evidence, statements, the judge's orders, and hearing transcripts. Upon receiving this more comprehensive package, you will also be informed of the deadline (Meeting Schedule) by which you must submit your written argument to the Board.

To draft your appeal brief, you can use the transcripts and highlight each point where you believe the judge made an error. Be sure to send your brief to the Board at least 10 days before the deadline to ensure it arrives on time. Alternatively, you can request an extension to submit your brief (Motion for Extension to File Respondent's Brief), but this must be done before the deadline expires.

How Should I Draft My Appeal Brief?

When drafting your appeal brief, it is important to identify each error you believe the immigration judge made when reaching their decision. Start by

describing the key facts of your case, such as: Why did you apply for asylum? What evidence did you present to support your case? After this, outline the decision made by the immigration judge and include any prior appeals, motions to reopen, or motions to reconsider filed in your case, along with their outcomes.

It is crucial to pinpoint the specific legal issues or factual problems in your case. The Board will only overturn a judge's decision if it is clearly erroneous. Keep in mind that laws and review standards are constantly evolving, so always verify that you are referencing the most current law to ensure you are following the best strategy.

At the conclusion of the document, clearly state your request to the Board of Immigration Appeals. For example, if you believe the judge's decision to order your deportation and deny cancellation of removal was incorrect, you can request in writing that the Board terminate the process or approve the cancellation of removal.

Do I Need a Lawyer to File an Appeal?

Given the complexity of a BIA appeal, having a BIA attorney is not a luxury but a strategic necessity. Filing an appeal is not just about completing a form and waiting for a second chance; it is a complex legal process where your immigration future is at stake.

One of the most critical aspects of this appeal process is that no new evidence can be presented to the Board of Immigration Appeals. The review is limited to the evidence in the original case file, focusing on whether the judge made a legal error or misapplied the law. If your case was denied, a BIA appeal requires a strong legal argument based on the existing record. The success of your appeal depends on how well you present your arguments, highlight errors in the judge's decision, and prepare a persuasive brief for reversal. These tasks demand specialized legal expertise that only an experienced appeals attorney can provide.

A deep understanding of immigration laws and judicial precedents, combined with the ability to strategically analyze the case record and master legal language, is essential to present strong and convincing arguments to the BIA.

At Tingen Law, our expert attorneys identify legal errors in judicial decisions and draft compelling briefs to persuade the Board, gaining valuable time during the appeal process. Having an attorney can help you avoid severe consequences, such as immediate deportation.

With over 10 years of experience, Tingen Law builds strong defenses before the Board to help individuals like you stay with their families, avoid deportation, and even achieve status regularization.

What Can I Do If the BIA Denies My Appeal?

The Board of Immigration Appeals (BIA) can make various decisions after reviewing your appeal. They may affirm, reverse, or modify the decisions made

by an immigration judge, typically focusing on matters of deportation, asylum, or other immigration-related rulings.

- **Affirmation:** If the BIA affirms the judge's decision, it means the original ruling—such as a deportation order or denial of your application—remains in effect and becomes enforceable.
- **Reversal:** If the BIA reverses the decision, it nullifies the immigration judge's ruling, which could result in avoiding deportation, being granted asylum, or other favorable outcomes.
- **Modification:** If the BIA modifies the decision, it changes the terms of the immigration judge's ruling, such as altering the deportation order or adjusting how an asylum decision is applied.
- **Remand:** In some cases, the BIA may remand the case back to the original immigration judge for a new decision. This can happen due to procedural errors or the need for additional information.

If the Board of Immigration Appeals (BIA) denies your appeal, the good news is that there are still legal options available to continue fighting for your future. Here's what you can do:

- 1. File an Appeal with a Federal Circuit Court:** You can take your case to the federal circuit court corresponding to your jurisdiction. Unlike the BIA process, this moves your case to a judicial court outside the administrative immigration system. This option is valid if you believe there was a legal error or incorrect interpretation of the law. However, this process is even more technical and complex, making it essential to have an attorney specialized in federal immigration appeals.
- 2. File a Motion to Reopen:** If you have new and compelling evidence that was not presented in the original case, you can file a Motion to Reopen. This request must be well-argued and submitted within strict deadlines.
- 3. File a Motion to Reconsider:** If you believe the BIA made its decision based on a misinterpretation of the law or a factual error, you can file a Motion to Reconsider. This motion requires a strong legal basis and must also adhere to strict time limits.

Each of these options requires careful preparation, adherence to deadlines, and a solid legal strategy.

What Does the BIA's Decision on My Case Mean?

When you receive the Board of Immigration Appeals (BIA) decision, it's common to feel unsure about whether you've won or lost. The BIA can overturn the judge's decision, agree with it, or even send the case back to the judge for another hearing. If the decision is unclear, it's crucial to consult with your attorney for clarification.

- **If the BIA Rules in Your Favor:**

If the BIA overturns the judge's decision and approves your case, the government (ICE) still has the right to appeal. ICE has 30 days to file their appeal brief. If they do not appeal, you will likely be released within 30 to 35 days after the judge's decision.

- **If ICE Appeals:**

If ICE files a notice of appeal, you may remain in detention until the BIA makes a decision on the case.

In this situation, you can request a new bond hearing before the judge to seek release while your case

is pending.

For any scenario, it's essential to stay in close contact with your attorney to understand your options and next steps.




FAQs About BIA

Can I Stay in the U.S. While My Appeal Is Pending?

Yes, you can. If you file your appeal with the Board of Immigration Appeals (BIA) within the strict 30-calendar-day deadline from the date you received the adverse decision from the immigration judge, an automatic stay of your deportation order is activated. This provision allows you to remain legally in the United States while your case is under review and until the BIA reaches a final decision. In other words, the deportation order will not be enforced during the appeal process.

It's important to note that this 30-day deadline is non-negotiable. Missing it could result in losing your right to appeal and the immediate execution of the deportation order. Therefore, it's highly advisable to seek legal counsel from an experienced immigration attorney as soon as you receive an unfavorable decision. This ensures you understand your options and



can file your appeal promptly and correctly.

The automatic stay provides you with the opportunity to present your arguments to the BIA without the immediate threat of deportation. However, this protection does not apply if your appeal is filed late or fails to meet legal requirements.

How Much Does a BIA Appeal Cost?

The filing fee for Form EOIR-26 to appeal a decision to the Board of Immigration Appeals (BIA) is \$110 USD. This fee covers only the administrative cost required by the government to process your appeal.

In addition to this government fee, if you choose to hire an attorney to represent you during the BIA appeal process, you'll need to account for legal fees. The cost of hiring an experienced immigration attorney for a BIA appeal can vary significantly based on several factors, including:

Will I Be Detained While Waiting for a Decision?

- **If You Were in Custody When Filing the Appeal**

If you were in immigration detention when you filed your appeal, it's likely you will remain detained until the BIA issues a final decision. However, you have the right to explore options for release while your appeal is pending. Your attorney can request a bond hearing before an immigration judge, where they will argue that you are neither a danger to the community nor a flight risk, seeking your release on bond.

If bond is not granted, your attorney may pursue supervised release. This could allow you to leave detention under certain conditions, such as regular check-ins, wearing an electronic monitor, or adhering to other immigration requirements. The decision to detain or release you during the appeal process is made by the BIA or an immigration judge, based on the specifics of your case and your attorney's arguments.

- **If You Were Already Released:**

If you were not in custody when you filed your appeal, you can typically remain in the community while awaiting the BIA's decision.

In either scenario, it's essential to work closely with your attorney to understand your options and take the best course of action for your situation.

How Can I Check the Status of My Appeal?

You can check the status of your appeal to the immigration judge's decision by calling the EOIR Automated Case Information System at 1-800-898-7180 or visiting the official EOIR website. You'll need your Alien Number (A-Number) to access the information.

Your attorney can also consult directly with the BIA and keep you updated on any changes or resolutions.



Conclusion

Receiving a negative decision in your immigration case can cause deep disappointment and distress. However, it's crucial to understand that this setback doesn't mean the end of your legal options. An appeal submitted to the Board of Immigration Appeals (BIA) is a vital pathway to reevaluate your situation. It gives you a second procedural opportunity to argue and defend your fundamental right to remain in the United States with your loved ones, aspiring to build a stable and prosperous life in the country.

The BIA appeal process is technical, with very strict deadlines and complex rules. However, it is also a powerful tool which, when used with knowledge and strategy, can represent the beginning of a clear path toward the regularization of your status in the country.



Are You Ready to Take the Next Step?

If you're considering appealing an immigration decision or need clear legal guidance, schedule a consultation with our team today. At Tingen Law, we're here to help you make informed decisions, protect your rights, and build a safer path toward your immigration future.

[Schedule Your Free Consultation](#)